IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 722 OF 2007

Pramod Vasant Shinde ..Petitioner

Vs.

Shir Niket Kaushik and ors. ..Respondents

Mr. Rajendra Shirodkar for petitioner.

Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE,J.

Reserved on : July 02, 2007.

Pronounced on : July 05, 2007.

P.C.:

1. Heard Mr. Shirodkar the learned counsel for the petitioner. Mr. Adsule the learned APP appears for the State.

2. The petitioner was issued a notice dated 24/7/2006 for his externment under Section 56 of the Bombay Police Act, 1951 (for short the Act) and consequently by the order dated 18/11/2006 he came to be externed for a period of two years from the territories of Mumbai Urban, Mumbai Suburban, Thane

and New Bombay. The said order of externment was also challenged by filing an appeal before the State Government. The appeal has been dismissed on 17/2/2007 and hence this petition.

3. The externment order has been challenged mainly on two grounds, (a) that the criminal cases registered against the petitioner and the in-camera statements of five persons pertain to the incidents that had taken place within the territories of Greater Mumbai District and none of them had taken place either in Thane District or in the New Bombay area and (b) the Designated Officer has not recorded his opinion that the witnesses were not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property. In support of these contentions, the learned counsel has relied upon the following decisions of this Court:-

(a) Yashwant Damodar Patil vs. Hem Karkare, Deputy Commissioner of Police, Thane and anr. [1989 Mh.L.J. 1111].

(b) Silva @ Gora Silva Ayanar Arjun vs. Nawal Bajaj and anr. [2007 (1) Bom. C.R. (Cri.) 331].

(c) Mulla @ Malva Niyaj Alli Siddhique vs. State of Maharashtra and ors. [2007 ALL MR (Cri) 1630].

4. The learned APP has placed before me the concerned files. It is clear from the record that the petitioner was heard by the Appellate Authority and the points of challenge to the order of externment passed on 18/11/2006 have been duly considered. The Appellate Authority has observed from the record that even though the criminal cases filed against the petitioner are pending trial and five in-camera statements have been recorded, the petitioner has created a reign of terror with his accomplices and by the threats of deadly weapons like knives, swords etc. amongst the residents, shop keepers, traders, building contractors, garage owners and hawkers etc. in the areas of Bharat Nagar, Ayodhya Nagar, Omganesh Nagar, Kasturba Nagar, Patel Nagar, Islampura, Sahyadri Nagar, Nagababa Nagar, Shahaji Nagar, Mahulgaon,

Gavhanpada, Chembur Camp and Vashinaka all falling under the RCF Police Station and none of these affected persons are willing to come forward to file a complaint against the petitioner as is clear from the in-camera statements recorded of five persons.

5. So far as the Districts of externment are concerned, it is true that in the show-cause notice dated 24/7/2006 issued to the petitioner the Districts of Mumbai Urban, Mumbai Suburban, Thane and Raigad were mentioned, in the externment order the area of New Bombay has been added in place of Raigad District. It is well known that New Bombay area is part of Thane District and the show-cause notice had mentioned about the proposed externment from Thane District as well. When the New Bombay area is part of Thane District, it cannot be said that the impugned order of externment is beyond the show-cause notice. So far as the areas in which the alleged incidents have taken place, undoubtedly, the nexus of the incidents, though taken place under the Trombay Police Station territories, cannot be confined or restricted to the Greater Mumbai area alone. The crimes network between the Districts of Greater Mumbai and Thane is so interlinked that it

will be difficult to segregate these two Districts and the incidents taking place in one District have impact or nexus on the law and order situation in the other District. The New Mumbai area is almost like another suburbs of Mumbai and the itegrality of all these areas is such that the incidents of crime have an impact on or nexus with the other suburbs.

6. In the case of Yashwant Damodar Patil (Supra), a Division Bench of this Court, while dealing with the scheme of Section 56(1) of the Bombay Police Act, 1951 stated thus:-

> ". Section 56(1) of the Bombay Police Act visualises three situations in which the order of externment could be passed by the designated officer. We will, however, ignore, for the purpose of the disposal of this petition, the third type of situation and only analyse the two situations which are covered by clauses (a) and (b) of section 56(1) of the Act. An order of externment can be passed against a person whose movements or acts are

causing or calculated to cause alarm, danger or harm to person or property. That is what is provided in clause 9a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence. It is so provided in the first part of clause (b) of section 56(1) of the Act. An order of externment can also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, or Chapter XVI, or Chapter XVII of the Indian Penal Code. This is so provided in the latter part of clause (b) of section 56(1) of the Act. But it is not enough that these conditions alone are satisfied. In addition to this, the designated officer should be of the opinion that witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or

property."

. If there are reasonable grounds for believing that a person is engaged or is about to engage in the commission of offence involving force or violence and witnesses are unwilling to depose against him, he can be externed under first part of Clause (b) of Section 56(1) of the Act. A person who is engaged or is about to engage in the commission of an offence punishable under Chapter XII, or Chapter XVI, or Chapter XVII of IPC and against whom witnesses are unwilling to come forward and depose, can also be externed as per the second part of clause (b) of Section 56(1) of the Act. The petitioner was issued a show-cause notice under Section 59 of the Act setting out the grounds on which the proposed action was contemplated and he was also informed that his acts/movements were causing or calculated to cause alarm, danger or harm to persons and property and the witnesses were not willing to come forward to give evidence in public against him. The Designated Officer, therefore, formed an opinion that it was necessary to exercise the power of externment under Section 56(1) of the Act and the

material on record does not suggest that the said opinion was perverse or formed casually. The movements of the petitioner, on the backdrop of the incidents reported against him, could not be limited only to the Greater Bombay area and having regards to the integral nature of the Bombay Suburban, Bombay Urban, New Bombay and Thane District, the externment order passed cannot be termed as illegal or in breach of the requirements of Section 56(1) of the Act. The Competent Authority as well as the Lower Appellate Authority has separately considered the report submitted by the Senior Inspector, RCF Police Station as well as Assistant Commissioner of Police, Trombay Division.

7. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)